

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of Virginia Cellular LLC)	
For Designation as an Eligible Telecommunications)	
Carrier in the State of Virginia)	

NTELOS' Opposition to Petitions for Reconsideration

On January 22, 2004, the Commission released a Memorandum Opinion and Order on the Petition of Virginia Cellular, LLC for a Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia in the above-captioned case ("January Order"). That order granted Virginia Cellular the ETC status it sought in all parts of its wireless license area with the sole exception of the Waynesboro wire center served by NTELOS Telephone Inc. ("NTELOS"). On February 23, 2004, Virginia Cellular, LLC ("Virginia Cellular") and two other parties filed Petitions for Reconsideration of the January Order. NTELOS files this opposition to portions of the Petitions for Reconsideration.

In its previous comments, NTELOS and other Virginia rural telephone companies pointed out that Virginia Cellular's application for ETC status raises issues that have never been considered in Virginia. Virginia Cellular was the first carrier, wireline or wireless, to seek ETC status in Virginia study areas served by rural telephone companies.

In addition, Virginia Cellular requested ETC status to serve only a portion of the study areas of several rural telephone companies. Although the ETC petitions being submitted to the FCC (including this one) had become “cookie cutter” filings, we urged the FCC to conduct a meaningful review based upon the facts of this case. The Commission has completed such a review. There is no basis for reconsidering the January Order as requested by Virginia Cellular.

In its Petition for Reconsideration, Virginia Cellular claims that the January Order is contrary to decisions previously made by the FCC in other ETC designation proceedings. The FCC made its decision in this proceeding based upon the specific situation existing in Virginia and in the geographic areas in which Virginia Cellular sought Universal Service funding.

ETC designation in the service areas of rural companies requires a meaningful assessment of the public interest impact. That can only be done through a process that is rigorous, specific and, fact-intensive.¹ This standard is particularly appropriate when a redefinition of a rural study area is at issue. Congress established additional statutory requirements for rural study areas for a reason – the clear legislative intent is for a high level of scrutiny when evaluating ETC applications for designations in rural carrier study areas.² There is a presumption that rural telephone study areas should not be disaggregated for this purpose.³ The generalized benefits cited by Virginia Cellular in a situation where it clearly sought to serve only the high-density part of a study area were plainly insufficient.

¹ See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45 (Released February 27, 2004) (“Recommended Decision”) at, e.g., paras. 5, 11, 12 and 17.

² Id. at para. 17.

³ Id. at para. 55.

In its recent Recommended Decision, the Federal State Joint Board on Universal Service reinforced the approach that the Commission took in the January Order:

The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility. Rural carrier service areas often have low customer densities and high per-customer costs. Subsidies flowing from federal and state universal service funds are often substantial. The Rural Task Force in White Paper #2 documented these effects and explained that rural carriers serve areas with lower population and line density and serve a smaller proportion of business customers. These circumstances support our belief that state commissions should apply a particularly rigorous standard to the minimum qualifications of applicants seeking ETC designation in rural carrier service areas.⁴

The language quoted above from the Recommended Decision addressed circumstances in which a carrier is seeking to serve the entire study area of a rural company. Virginia Cellular not only sought ETC designation in NTELOS' study area, but also asked the FCC to redefine NTELOS' study area so that Virginia Cellular need only serve Waynesboro. The FCC refused this portion of Virginia Cellular's request, citing one of the reasons discussed by the Joint Board when it originally recommended that the Commission retain the study areas of rural telephone companies as the service areas for ETCs -- the potential for "cream-skimming".⁵

The FCC examined the population densities of each wire center in the study area and confirmed that Waynesboro has a dramatically higher density in comparison to the other NTELOS wire centers. "The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS' study area is approximately 33 persons per square

⁴ Id. at para. 18 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996)).

⁵ See January Order at paras. 32-35.

mile.”⁶ The Commission found that “the widely disparate population densities in NTELOS’ study area and the status of Waynesboro as NTELOS’ sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage.”⁷ The Commission’s conclusion that it would not be in the public interest to designate Virginia Cellular as an ETC in Waynesboro is sound and well-reasoned.

Virginia Cellular essentially makes only one argument in response to the Commission’s cream-skimming concerns -- that rural carriers were previously given an opportunity to disaggregate universal service support. But as the Joint Board observes: “although disaggregation may alleviate some concerns regarding cream-skimming by competitive ETCs, we hesitate to say that it necessarily addresses all concerns.”⁸ The Joint Board further urged the FCC and State Commissions to make a thorough and complete review of each individual situation presented in requests to redefine rural study areas:

In making this determination, the states and the Commission place the burden of proof upon the ETC applicant. If a service area redefinition is proposed, the existing rules also require the states and the Commission to analyze the Joint Board’s previously expressed concerns about cream skimming in the particular area covered by the ETC application. Public comment is invited during every step in this process. Because we believe these rules are working to thoroughly examine public interest concerns inherent in service area redefinition, we do not believe any change is needed in these rules at this time. As with other aspects of the ETC designation process discussed above, we encourage the states and the Commission to conduct a rigorous and fact-intensive analysis of requests for service area redefinition (*emphasis added*).⁹

⁶ January Order at para. 33.

⁷ Id.

⁸ Recommended Decision at para. 54.

In May of 2002, NTELOS chose “Path 1” in the disaggregation process and so continues to receive USF on a study area basis. The idea that NTELOS’ choice on disaggregation was somehow aimed at “discouraging competitive entry” by Virginia Cellular and other wireless carriers is ludicrous. NTELOS’ “Path 1” decision was simply the best choice for the company at that time due to a number of factors.

The decision on disaggregation was a daunting one to make in the short time allowed. NTELOS and many other rural carriers consulted with outside regulatory experts about the options (or “paths”) available and had company-specific analyses done by these experts. The consulting firm with which NTELOS worked at the time has informed us that only two of the 170 rural carriers with which it worked chose to disaggregate.

With its limited regulatory staff, NTELOS had no resources to take on the administrative burdens of wire center disaggregation, which involves complex high cost model cluster mapping related to population density and other technical cost modeling. Although such a filing had been generally described in the Commission decision, none had been attempted and no one really could say with any certainty the form and parameters for such a filing – or the long-term effects that disaggregation might have on the Universal Service support received by NTELOS.

None of the rural ILECs in Virginia Cellular’s service area, and very few in the nation, selected “Path 3” involving cost disaggregation by wire center or even smaller areas within a wire center. To our knowledge, there has never been a “Path 2” filing made. Disaggregation is still a burdensome, costly process the effects of which on the rural companies are still not completely clear.

NTELOS and other rural telephone companies do not view universal service support on a line-by-line basis. This is particularly true for companies like NTELOS that receive no high cost loop support. All of NTELOS' USF payments are based upon elements that were previously recovered in access charges. Implicit or explicit, this support has always been used to build and maintain an overall, modern telecommunications infrastructure throughout the study area. In NTELOS' view, disaggregation has the potential to introduce new uncertainty and volatility for its Universal Service support, particularly because of the size and density of Waynesboro in comparison to the rest of the NTELOS study area.

As the carrier of last resort with responsibility to provide quality telephone service to each and every person throughout the entire study area, uncertainty regarding the level of support is simply not acceptable to us and it is not in the public interest for consumers in the study area. The core purpose of universal service support has always been and continues to be to help telephone companies in high-cost areas to make the investments in the infrastructure and assure that rural customers have reasonably-priced, quality telecommunications. Cream-skimming in the Waynesboro wire center would endanger that core purpose.

Virginia Cellular cannot claim that any areas in the Waynesboro exchange are currently unserved. Neither can Virginia Cellular claim that consumers in Waynesboro do not have wireless alternatives – Virginia Cellular already competes in Waynesboro, along with five other wireless providers (including an NTELOS affiliate). Rather, Virginia Cellular is reduced to claiming that the citizens of Waynesboro will be deprived of Virginia Cellular's Lifeline and Link-Up services as a result of the January Order.

NTELOS already provides Lifeline and Link-Up in the wire center and there is no indication that ETC designations should be used to create competition in Lifeline and Link-Up services.

Just as Virginia Cellular was not a factor in NTELOS' initial disaggregation decision, NTELOS should not be forced to disaggregate its support now for the convenience of Virginia Cellular. Virginia Cellular complains about administrative burdens it purportedly will experience as a result of the FCC's decision. The burdens of which Virginia Cellular complains appear insubstantial in comparison to those that Virginia Cellular would have the FCC force upon NTELOS by requiring disaggregation.

There is widespread recognition that the universal service system must be changed if it is to accomplish its core purpose. The Joint Board affirmed this reality in the Recommended Decision. Yet it is still very unclear how or when such changes will be made. The January Order is grounded in the facts of this particular case, is careful not to pre-judge future Joint Board or Commission action, and awards Virginia Cellular ETC status in the vast majority of the area in which it sought such designation. The FCC made the right public interest decision in not redefining NTELOS' study area. The petitions for reconsideration that argue otherwise should be denied.

Respectfully submitted,

/s/ Mary McDermott

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of March, 2004, a true and correct copy of NTELOS' Opposition to Petitions for Reconsideration was sent via First Class U.S. Mail to the following:

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